

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PLANNED PARENTHOOD OF  
WISCONSIN, INC., SUSAN PFLEGER,  
M.D., KATHY KING, M.D., and  
MILWAUKEE WOMEN'S MEDICAL  
SERVICES d/b/a AFFILIATED MEDICAL  
SERVICES,

Plaintiffs,

v.

OPINION AND ORDER

13-cv-465-wmc

J.B. VAN HOLLEN, ISMAEL OZANNE,  
JAMES BARR, MARY JO CAPODICE, D.O.,  
GREG COLLINS, RODNEY A. ERICKSON,  
M.D., JUDE GENEREAUX, SURESH K.  
MISRA, M.D., GENE MUSSER, M.D.,  
KENNETH.B. SIMONS, M.D., TIMOTHY  
SWAN, M.D., SRIDHAR VASUDEVAN, M.D.,  
OGLAND VUCKICH, M.D., TIMOTHY W.  
WESTLAKE, M.D., RUSSELL YALE, M.D., and  
DAVE ROSS,

Defendants.

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The court held a telephonic conference today to address the parties' joint motion to request guidance requiring neutral expert. (Dkt. #108.) Attorneys Carrie Y. Flaxman, Rene Paradis, and Tamara Packard appeared for plaintiffs; attorneys Maria S. Lazar and Clayton P. Kowski appeared for defendants. During the conference, the court described the process for appointing and utilizing an expert neutral, which the court now memorializes in this written opinion and order.

The court will appoint an expert pursuant to Federal Rule of Evidence 706. The expert's fees will be shared equally by the parties, although fees may be shifted at the end of the case to the prevailing party pursuant to Fed. R. Civ. P. 54(d)(1). The parties will

be required to pay the expert's invoices within thirty days of approval by the court. With those preliminary matters aside, the court provides the following plan to the parties on the appointment and use of a neutral, court-appointed expert:

- **Appointment of neutral expert**

As of yesterday, the court received input from both sides' designated experts as to the qualifications that the neutral expert should have and possible individuals with those qualifications. The court is now conducting its own research to identify an appropriate individual, and will let the parties know once an individual has been appointed.

- **Instructions and questions**

Attached to this opinion is a proposed letter instructing the neutral expert on how to proceed, along with proposed questions. The parties may provide any comments on the proposed letter and questions on or before March 10, 2014. The court will then finalize and send the letter and questions to the court-appointed expert.

- **Parties' experts' materials**

The parties shall provide their respective expert reports to the court-appointed expert, including any rebuttal expert reports when due, and shall also provide expert deposition transcripts when available. If requested, the parties shall also provide the neutral expert with any underlying documents or data referenced in those reports.

- **Neutral expert preliminary report**

The court will require the expert to submit a written, preliminary report responding to the questions outlined by the court on or before April 30, 2014. The court will docket the report for review by the parties.

- **Expert exchange at trial**

During the trial, the court anticipates the following colloquial approach: (1) the court-appointed expert will have an opportunity to pose questions to the parties' respective experts; (2) the judge will pose questions to those experts; and (3) the parties' counsel may then conduct a direct and cross-examination of the experts. After this exchange, the court-appointed expert will provide his final opinions and findings, with the court and the parties' counsel each having an opportunity to question the court-appointed expert as to those opinions and findings.

#### ORDER

IT IS ORDERED that:

- 1) the parties' joint motion for guidance regarding neutral expert (dkt. #108) is GRANTED as set forth above;
- 2) **on or before March 3, 2014**, the parties shall file all expert reports served on the other party on February 14, 2014; and
- 3) **on or before March 10, 2014**, the parties shall file comments to the court's proposed instructions and questions for the neutral court-appointed expert, which are attached to this order.

Entered this 27th day of February, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge